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No. 94-653

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

JACOBS MANUFACTURING COMPANY,
Petitioner,

v.

SAM BROWN COMPANY,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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REPLY MEMORANDUM FOR THE PETITIONER

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1. In its Brief in Opposition, Respondent concedes (Br. Op. 11) the correctness of our submission that motions for a new trial are committed to the sound discretion of the district court. Hence, such motions are not subject to *de novo* appellate review, especially where the trial court's decision is based upon the conduct of the trial and the fact that the jury verdict was the product of passion or prejudice. However, Respondent argues (*Id.* at 9) that the district court did abuse its discretion by "fail[ing] to articulate the required analysis by ignor-

ing the evidence that supported the jury's verdict." (*Id.* at 11).

But contrary to Respondent's assertion, the district court properly stated the basis upon which it concluded that a new trial was warranted. As the district court concluded (Pet. App. 53a), the defendant's case involved "Repetition of concepts like small company versus big company, local company versus foreign company and 'boilerplate' and that these concepts distracted the jury from a rational consideration of the evidence and from a careful application of the law as stated in the instructions."

In setting aside the verdict, which included $2.7 million in punitive damages, as the product of passion and prejudice, the trial court properly heeded the admonition of five members of this Court that arguments to a jury which emphasize that the defendant is a large out-of-state corporation are necessarily inflammatory. "[T]he emphasis on the wealth of the wrongdoer increased the risk that the award may have been influenced by prejudice against large corporations, a risk that is of special concern when the defendant is a nonresident." *TXO Production Corp. v. Alliance Resources Corp.*, 113 S.Ct. 2711, 2723 (1993) (Stevens, J., Rehnquist, C.J., Blackmun and Kennedy, JJ.). *See also Id.* at 2738 (O'Connor, J., dissenting) ("The temptation to transfer wealth from out-of-state corporate defendants to in-state plaintiffs can be quite strong."). Indeed, a jury trial is further tainted where the plaintiff, as here, emphasizes that the defendant is a corporation. *TXO, supra*, at 2737 (O'Connor, White and Souter, JJ., dissenting). "Corporations are mere abstractions and, as such, are unlikely to be viewed with much sympathy.").

2. Even assuming *arguendo* the correctness of Respondent's assertion that the district court did not state its reasons for granting a new trial with sufficient particularity, the proper procedure for the court of appeals

to have followed in such a case was to remand the case to the district court for supplementary proceedings to enable the district court to explain its ruling more fully.[1] However, in reinstating the verdict, the court of appeals usurped the authority of the trial judge to appraise the fundamental fairness of the proceedings on the basis of a *de novo* review of the evidence from his unique perspectives and thereby deprived Petitioner of the meaningful post-trial review by the trial judge as to whether the jury verdict was rendered in a constitutionally fair proceeding. As Justice O'Connor stated in her dissenting opinion last Term in *TXO Production Corp. v. Alliance Resources Corp., supra*, at 2742:

> This Court's decision in *Haslip* promised that, even if juries occasionally failed to fulfill their function faithfully, trial and appellate courts would provide *meaningful review* sufficient to discern impermissible influences and guarantee constitutional results. (emphasis supplied)

The decisions of this Court establish beyond question that the "meaningful review" of a punitive damages award required by the Constitution includes the trial court's first-hand judgment, reviewable on an abuse-of-discretion standard, to ensure that the verdict was not

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[1] *White v. Pence*, 961 F.2d 776 (8th Cir. 1992), upon which Respondent relies (Br. Op. 10), in fact explicitly supports our submission that the court of appeals should have remanded the case to the district court for supplementary proceedings rather than to reinstate the verdict. As the court in *Pence stated*: (*Id.* at 782)

> [T]he decision of whether or not to grant a new trial is a balancing decision and requires a careful consideration and articulation of the reasons by the district court. *It is inappropriate that we conduct this analysis; rather, we remand to the district court so that it may do so.* (emphasis added).

Here, on the other hand, in reinstating the verdict, the court below took the very step that it characterized as "inappropriate" in *White v. Pence*, and thereby violated Petitioner's constitutional right to have the new trial analysis conducted by the district court.

based on passion, prejudice or improper factors that would render it arbitrary or discriminatory punishment prohibited by the Due Process Clause. The sharp departure from traditional procedures by the decision below is tantamount to no review at all and therefore requires review by this Court. *Honda Motor Co., Ltd. v. Oberg*, 114 S.Ct. 2331 (1994).

CONCLUSION

For the reasons stated above and in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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